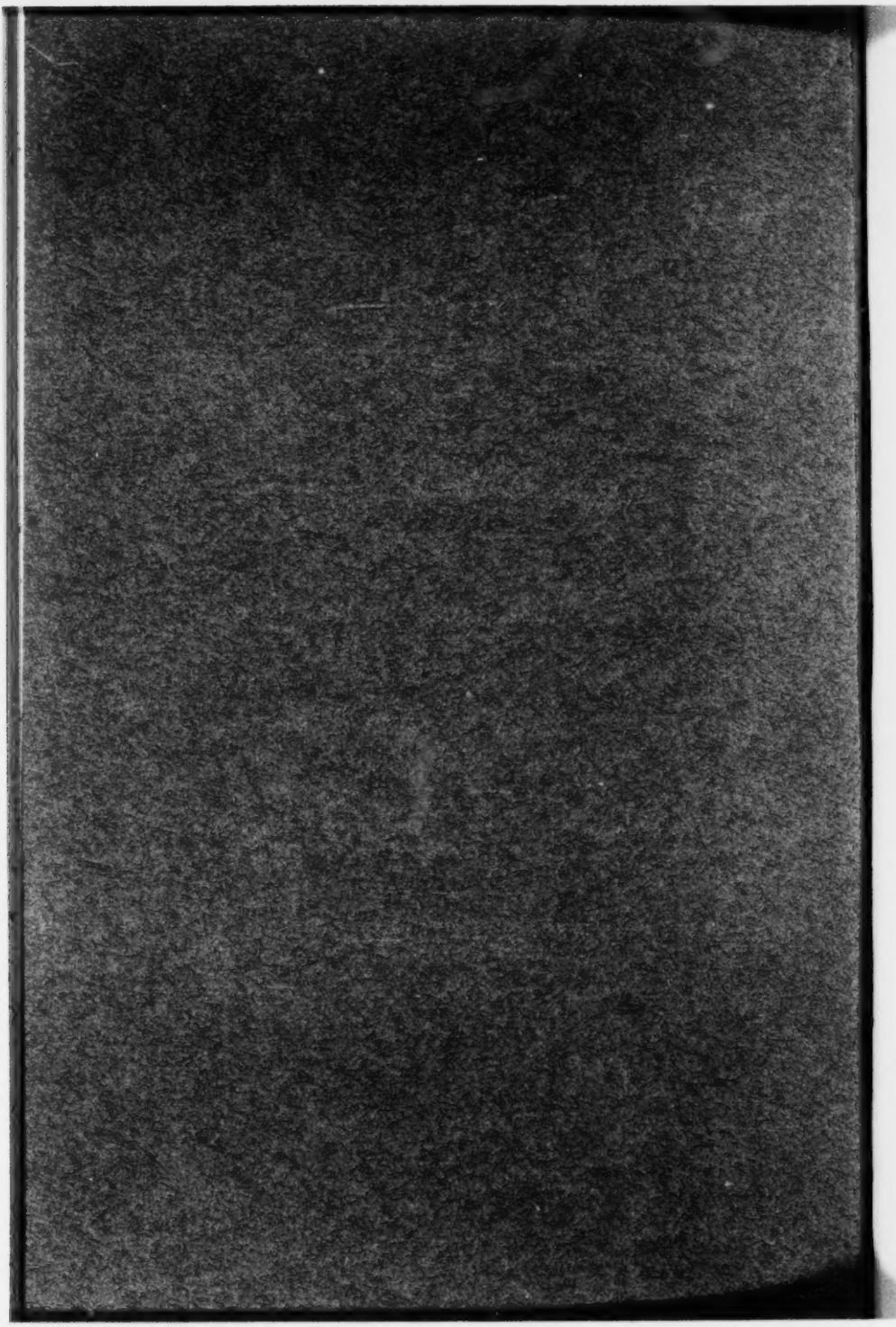

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Argument	4
Conclusion	5

CITATIONS

Cases:

Boston Safe Deposit & T. Co. v. *Commissioner*, 66 F. (2d) 179, certiorari denied, 290 U. S. 700	5
Burnet v. *Whitehouse*, 283 U. S. 148	4
Helvering v. *Pardee*, reported *sub nom. Helvering* v. *Butterworth*, 290 U. S. 365	4
Union Trust Co. v. *Commissioner*, 111 F. (2d) 60, certiorari denied, October 14, 1940, present Term	5
Warner v. *Commissioner*, 66 F. (2d) 403, certiorari denied, 290 U. S. 688	5

Statute:

Revenue Act of 1932, c. 209, 47 Stat. 169:	
Sec. 162	2

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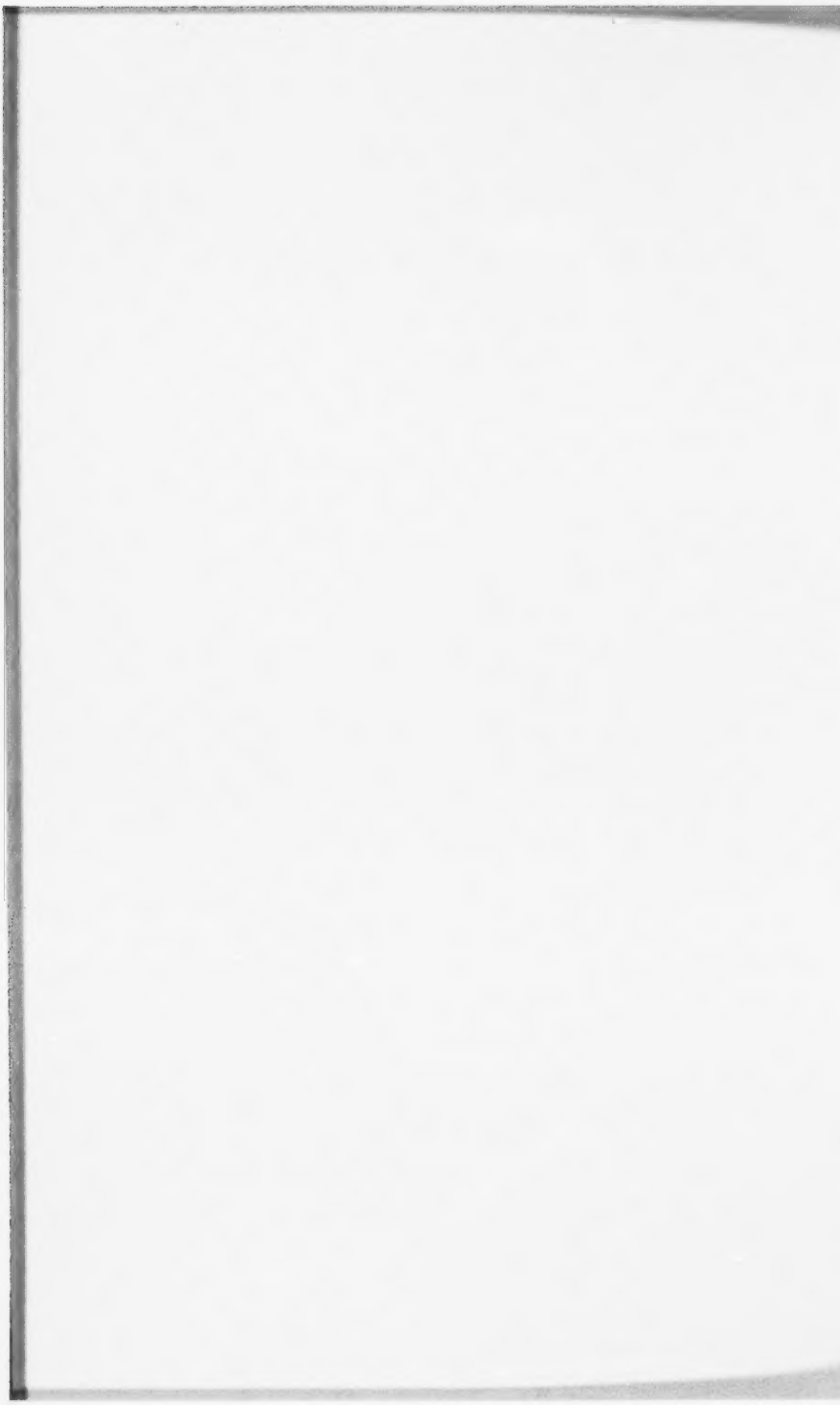

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 745

THE UNION TRUST COMPANY OF PITTSBURGH, TRUSTEE, JOHN MARSHALL LOCKHART, TRUST NO. 2, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Board of Tax Appeals (R. 129–131) is unreported. The opinion of the Circuit Court of Appeals (R. 195–199) is reported in 115 F. (2d) 86.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on September 27, 1940 (R. 200). The

petition for rehearing was denied on November 7, 1940 (R. 214). The petition for a writ of certiorari was filed on February 4, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A trust instrument called for the payment of annuities of $6,000 to each of seven individuals. The trustee had the power to invade the corpus if necessary in order to meet the payments. This necessity has never arisen, since the income has always been sufficient. The question presented is whether the payments are deductible for income-tax purposes from the income of the trust under Section 162 (b) of the Revenue Act of 1932.

STATUTE INVOLVED

Revenue Act of 1932, c. 209, 47 Stat. 169:

> SEC. 162. NET INCOME.
>
> The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—
>
> * * * * *
>
> (b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the

amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

* * * * *

STATEMENT

In 1922, John Marshall Lockhart created a trust, appointing The Union Trust Company of Pittsburg as trustee. The trust instrument called for the payment of $500 per month to each of seven named individuals for their lives. Accordingly, during the taxable year involved herein the trustee paid a total of $42,000 to these persons (R. 129–130).

The trustee was expressly authorized to withdraw from principal any sums required to augment the annual income of the trust so that the annuities could be paid in all events (R. 130). It was agreed between the parties that the total net income of the trust for the year 1932 was $138,325.61 (R. 178), and for the year 1933 was $117,792.49 (R. 185). Since the creation of the trust the income has always been sufficient to enable the trustee to pay the annuities without resorting to the corpus

(R. 130). The surplus income was paid to or set aside for a charitable institution (R. 177–178, 184–185).

From 1923 through 1931 the petitioner deducted the $42,000 paid to the individual beneficiaries in each year, and the beneficiaries paid income taxes on the sums received (R. 180, 187). In connection with the petitioner's returns for 1932 and 1933, the Commissioner determined that the petitioner was not entitled to deduct the $42,000 paid on account of the annuities, and asserted deficiencies (R. 129). The Board of Tax Appeals held that the Commissioner's determination was correct (R. 131), and the Circuit Court of Appeals affirmed (R. 200).

ARGUMENT

The decision of the court below that the distributions to the beneficiaries under the trust were payments of annuities and therefore not deductible by the estate is in accord with the applicable decisions of this Court. The annuities are gifts, payable in any event, and, if necessary, from the corpus. Such annuities are not taxable to the recipient (*Burnet* v. *Whitehouse,* 283 U. S. 148), and cannot be deducted by the trustee, even though they are paid out of income. *Helvering* v. *Pardee,* reported *sub nom. Helvering* v. *Butterworth,* 290 U. S. 365, 370–371.

The present case falls squarely within the principle established by those decisions. The settlor directed that the annuities should be paid out of trust

income, but, if the income was insufficient, the deficiency was to be made up out of the corpus (R. 130). It is clear that the annuities were not dependent upon the realization of income, but were payable in any event out of corpus. In these circumstances, the distributions, even though actually made from income, are not deductible. The facts herein are indistinguishable from *Union Trust Co.* v. *Commissioner,* 111 F. (2d) 60 (C. A. A. 7th), in which this Court denied certiorari on October 14, 1940, No. 105, present Term. See also *Boston Safe Deposit & T. Co.* v. *Commissioner,* 66 F. (2d) 179 (C. A. A. 1st), certiorari denied, 290 U. S. 700; *Warner* v. *Commissioner,* 66 F. (2d) 403 (C. A. A. 2nd), certiorari denied, 290 U. S. 688.

CONCLUSION

The decision below is in accord with the decisions of this Court and presents no conflict. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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